*8 December 2014*

# EUROPEAN STABILITY MECHANISM

# BY-LAWS

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## Article 1
*Hierarchy of Rules*

1. These By-Laws of the European Stability Mechanism (the "ESM") are adopted under the authority of, and are intended to be complementary to, the Treaty Establishing the European Stability Mechanism signed in Brussels on 2 February 2012 (the "Treaty"); they shall be construed accordingly.

2. In the event of a conflict between any provision of these By-Laws and any provision of the Treaty, the provision of the Treaty shall prevail. In the event of a conflict between any provision of these By-Laws and any provision of any rules or guidelines adopted pursuant to the Treaty, the provision of these By-Laws shall prevail.

3. In these By-Laws, and unless otherwise specified herein, capitalised terms shall have the same meanings as ascribed to them in the Treaty, and the terms "mutual agreement", "qualified majority" and "simple majority" shall have the same meanings as ascribed to them by Article 4(3), (5) and (6) of the Treaty.

## Article 2
*Chair of the Board of Governors*

The Board of Governors shall, by qualified majority, decide:

(a) either to be chaired by the President of the Eurogroup, as referred to in Protocol (No 14) on the Eurogroup annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union,

(b) or to elect a chairperson and a vice-chairperson from among its members, each for a renewable term of two years.

The chairperson of the Board of Governors shall hereafter be referred to as the "Chairperson", and the vice-chairperson, if any, as the "Vice-Chairperson".

**Article 3**
*Meetings of the Board of Governors*

1. The Board of Governors shall meet at least once every year and whenever the affairs of the ESM so require, at the time and place specified in the notice of the meeting.

2. Meetings of the Board of Governors shall be called by the Chairperson, on his or her own initiative or at the written request of any Governor or the Managing Director.

3. The Chairperson shall cause notice of the meeting to be sent to (i) all Governors and alternate Governors, as well as to (ii) the Member of the European Commission in charge of economic and monetary affairs, (iii) the President of the European Central Bank (the "ECB") and (iv) the President of the Eurogroup (if he or she is not the Chairperson or a Governor).

   Notice of the meeting shall specify the time and place of the meeting and its agenda.

   Notice shall be sent by express courier, fax or electronic mail, not less than 30 calendar days prior to the date set for the annual meeting and not less than 15 calendar days prior to the date set for any other meeting, except in urgent cases when notice shall be given as soon as possible.

4. The Chairperson shall send an invitation to each of the persons who should attend the meeting as observers pursuant to Article 5(4) or (5) of the Treaty.

   Said invitation shall specify the time and place of the meeting, as well as the agenda item or items for which the addressee is invited to attend the discussion.

5. The agenda shall be prepared by the Chairperson in consultation with the Managing Director and shall include the items submitted by the person or persons requesting the meeting.

   Additional subjects may be placed on the agenda by any Governor or the Managing Director, by written request submitted to the Chairperson not less than seven calendar days prior to the date set for the meeting. The Chairperson shall promptly inform all persons referred to in paragraph 3 above by letter sent by express courier, fax or electronic mail.

   In urgent cases, additional subjects may be placed on the agenda until immediately before the start of the meeting; *provided that* additional items of which the Chairperson has informed the persons referred to in paragraph 3 above less than 48 hours before the start of the meeting, shall be included in the agenda only if so decided by the Board by qualified majority at the beginning of said meeting.

6. The Chairperson shall cause documents for discussion at the meeting to be sent to all persons referred to in paragraph 3 above in advance of the meeting, by express courier, fax or electronic mail, within the time limits defined in the rules of procedure of the Board of Governors.

   The Chairperson shall determine which documents need to be sent to other invitees to the meeting.

7. Meetings of the Board of Governors shall be presided over by the Chairperson or, in his or her absence:

    (a) if the Chairperson is the President of the Eurogroup, by his or her alternate; and

    (b) otherwise by the Vice-Chairperson or, in his or her absence, by the Governor in attendance who is the most senior in age.

8. Governors and alternate Governors may take part in the discussion, and cast their votes, by means of teleconferencing or any other electronic means allowing real-time bidirectional or multidirectional communication enabling participants to hear all other participants and address the meeting from a remote location. Participation by such means shall constitute presence in person at said meeting for purposes of any quorum requirement.

    Persons invited as observers or their alternates, as the case may be, may likewise participate in the meeting through electronic mode in the manner described in the preceding subparagraph.

9. Any alternate Governor may participate in meetings of the Board of Governors but may vote, make points of order or table motions only when he or she is replacing his or her principal.

10. Without prejudice to the powers of the Board of Governors, matters to be decided by the Board of Governors shall be the subject of prior discussion by the Board of Directors whenever possible.

## Article 4

*Board of Governors: Voting without Meeting*

1. Whenever the Chairperson or the Managing Director considers that one or more decisions on specific matters that are for the Board of Governors to determine should not be deferred until its next scheduled meeting but do not warrant the calling of an earlier meeting of the Board of Governors, the Chairperson shall solicit the vote of the Governors or their alternates on said matters without a meeting.

2. To this effect, the Chairperson shall promptly cause a motion embodying the proposed decisions to be transmitted, by express courier, fax or electronic mail, to (i) each Governor and alternate Governor, as well as to (ii) the Member of the European Commission in charge of economic and monetary affairs, (iii) the President of the ECB and (iv) the President of the Eurogroup (if he or she is not the Chairperson or a Governor).

3. Votes shall be cast during such period and in such manner as the rules of procedure of the Board of Governors prescribe.

4. Upon expiration of the period prescribed for voting, the Chairperson shall record the results as if a meeting of the Board of Governors had been held and shall notify all persons referred to in paragraph 2 above thereof.

If the replies received do not include the Governors or alternate Governors representing two-thirds of the ESM Members with voting rights representing at least two-thirds of the total voting rights, the motion shall be considered lost.

**Article 5**
*Delegation to the Board of Directors*

1. Pursuant to Article 5(6)(m) of the Treaty, the Board of Governors, acting on its own initiative or upon a proposal of the Managing Director, may, by resolution adopted by mutual agreement, delegate to the Board of Directors one or more of the tasks listed in Article 5(6) or (7) of the Treaty.

2. The Board of Directors shall not take any action pursuant to powers delegated to it under paragraph 1 above which is inconsistent with any action taken by the Board of Governors.

3. The Board of Governors shall retain full power to exercise authority over any matter delegated to the Board of Directors under paragraph 1 above.

**Article 6**
*Meetings of the Board of Directors*

1. The Board of Directors shall meet whenever the affairs of the ESM so require, at the time and place specified in the notice of the meeting.

2. Meetings of the Board of Directors shall be called by the Managing Director, on his or her own initiative or at the written request of any Director.

3. The Managing Director shall cause notice of the meeting to be sent to (i) all Directors and alternate Directors, as well as to (ii) the observers appointed by the Member of the European Commission in charge of economic and monetary affairs and by the President of the ECB and to (iii) the President of the Eurogroup Working Group.

   Notice of the meeting shall specify the time and place of the meeting and its agenda.

   Notice shall be sent by express courier, fax or electronic mail, not less than seven calendar days prior to the date set for the meeting, except in urgent cases when notice shall be given as soon as possible.

4. The Managing Director shall send an invitation to each of the persons who should attend the meeting as observers pursuant to Article 6(3) and (4) of the Treaty.

   Said invitation shall specify the time and place of the meeting, as well as the agenda item or items for which the addressee is invited to attend the discussion.

5. The agenda shall be prepared by the Managing Director and shall include the items submitted by the person or persons requesting the meeting.

   Additional subjects may be placed on the agenda by any Director, by written request submitted to the Managing Director not less than three calendar days prior to the

date set for the meeting. The Managing Director shall promptly inform all persons referred to in paragraph 3 above by letter sent by express courier, fax or electronic mail.

In urgent cases, additional subjects may be placed on the agenda until immediately before the start of the meeting; *provided that* additional items of which the Managing Director has informed the persons referred to in paragraph 3 above less than 48 hours before the start of the meeting, shall be included in the agenda only if so decided by the Board by qualified majority at the beginning of said meeting.

6. The Managing Director shall cause documents for discussion at the meeting to be sent to all persons referred to in paragraph 3 above in advance of the meeting, by express courier, fax or electronic mail, within the time limits defined in the rules of procedure of the Board of Directors.

   The Managing Director shall determine which documents need to be sent to other invitees to the meeting.

7. Meetings of the Board of Directors shall be presided over by the Managing Director or, in his or her absence, by the Director designated by the Board, acting by simple majority.

8. Directors and alternate Directors may take part in the discussion, and cast their votes, by means of teleconferencing or any other electronic means allowing real-time bidirectional or multidirectional communication enabling participants to hear all other participants and address the meeting from a remote location. Participation by such means shall constitute presence in person at said meeting for purposes of any quorum requirement.

   Persons invited as observers or their alternates, as the case may be, may likewise participate in the meeting through electronic mode in the manner described in the preceding subparagraph.

9. Any alternate Director may participate in meetings of the Board of Directors but may vote, make points of order or table motions only when he or she is replacing his or her principal.

## Article 7

*Board of Directors: Voting without Meeting*

1. Whenever the Managing Director considers that one or more decisions on specific matters that are for the Board of Directors to determine should not be deferred until its next scheduled meeting but do not warrant the calling of an earlier meeting of the Board of Directors, the Managing Director shall solicit the vote of the Directors or their alternates on said matters without a meeting.

2. To this effect, the Managing Director shall promptly cause a motion embodying the proposed decisions to be transmitted, by express courier, fax or electronic mail, to (i) each Director and alternate Director, as well as to (ii) the observers appointed by the Member of the European Commission in charge of economic and monetary affairs

and by the President of the ECB and to (iii) the President of the Eurogroup Working Group.

3. Votes shall be cast during such period and in such manner as the rules of procedure of the Board of Directors prescribe.

4. Upon expiration of the period prescribed for voting, the Managing Director shall record the results as if a meeting of the Board of Directors had been held and shall notify all persons referred to in paragraph 2 above thereof.

   If the replies received do not include the Directors or alternate Directors representing two-thirds of the ESM Members with voting rights representing at least two-thirds of the total voting rights, the motion shall be considered lost.

## Article 8
*Emergency Voting Procedure*

1. Whenever the European Commission and the ECB consider that a failure to urgently adopt one or more decisions to grant or implement financial assistance under the Treaty would threaten the economic and financial sustainability of the euro area, the Member of the European Commission in charge of economic and monetary affairs and the President of the ECB shall promptly advise the Chairperson and the Managing Director in writing of such conclusion and the underlying analysis and request application of the emergency voting procedure pursuant to Article 4(4) of the Treaty.

2. The Chairperson and the Managing Director shall thereupon prepare the decision or decisions to be taken and call a meeting of the Board of Governors or the Board of Directors, as the case may be, on an urgent basis.

   If a meeting of the relevant Board has already been called, the Chairperson and the Managing Director shall adapt the agenda, and may advance the date, of such meeting, as appropriate, and shall promptly inform all addressees of the original notice by letter sent by express courier, fax or electronic mail.

   Notice of the meeting or said letter shall make specific reference to the emergency voting procedure pursuant to Article 4(4) of the Treaty and include a copy of the Commission's and ECB's conclusion referred to in paragraph 1 above.

3. Representatives of the European Commission and the ECB shall present the analysis underlying their conclusion referred to in paragraph 1 above at the relevant meeting of the Board of Governors or the Board of Directors, as the case may be.

4. Under the emergency voting procedure, any decision on the matters referred to in Article 5(6)(f) or (g) of the Treaty, to be taken by the Board of Governors or, pursuant to the powers delegated to it in accordance with Article 5 of these By-Laws, by the Board of Directors, shall require a qualified majority of 85% of the votes cast.

**Article 9**
*Secretary*

The Secretary General of the ESM or, in his or her absence, a member of the staff of the ESM designated by the Secretary General shall serve as secretary of the Board of Governors and the Board of Directors (the "Secretary").

**Article 10**
*Minutes*

1. The Secretary shall prepare minutes and a summary record of the proceedings of the meetings of the Board of Governors and the Board of Directors.

   The draft minutes and summary record of proceedings shall be presented for approval at the next meeting of the Board of Governors or the Board of Directors, as the case may be, or, where necessary, by written procedure pursuant to Article 4 or 7.

   They shall be signed by the Chairperson or the Managing Director, as the case may be, by the Secretary and by the person responsible for the legal affairs of the ESM.

2. The minutes of the meetings of the Board of Governors and the Board of Directors shall contain:

   (a) the names of the persons present and represented;

   (b) the agenda items;

   (c) the decisions adopted; and

   (d) such other matters as may be specified in the rules of procedure of the Board of Governors or the Board of Directors, as the case may be.

**Article 11**
*Management Board*

1. The Management Board shall consist of the Managing Director, who shall chair the Board, and such other members of the ESM's staff as the Managing Director shall designate from time to time.

2. The Management Board shall assist the Managing Director in conducting the current business of the ESM, in preparing the decisions of the Board of Governors and the Board of Directors and in seeing to their implementation.

3. The Management Board shall neither be a decision-making body of the ESM for matters going beyond the ESM's internal affairs, nor have any power of external representation of the ESM.

## Article 12

*Committees and Subsidiary Bodies*

The Board of Governors and the Board of Directors, acting by qualified majority, may each establish such permanent or ad hoc committees or subsidiary bodies as they consider necessary or appropriate to advise or otherwise assist them or the Managing Director in the performance of their respective duties. They shall define the tasks, composition and operating rules of such committees or subsidiary bodies.

## Article 13

*Duties of Directors*

1. Each Director and alternate Director shall devote to the activities of the ESM such time and attention as the interest of the institution may require.

2. While holding office at the ESM and for a period of six months thereafter, a Director or alternate Director may not engage in such activities as may be determined from time to time by the Board of Governors, acting by qualified majority, pursuant to Articles 5(7)(d) and 6(8) of the Treaty.

## Article 14

*Remuneration*

Governors, Directors and their respective alternates shall perform their duties without remuneration from the ESM.

## Article 15

*Borrowings*

1. The Board of Directors, acting by qualified majority, shall adopt detailed guidelines for the ESM's borrowing operations, and the Managing Director shall conduct such operations in accordance with said guidelines.

2. Any agreement, indenture or other document concerning the ESM's borrowing operations shall be signed on behalf of the ESM by the Managing Director or by any person acting within the limits of specific powers delegated by the Managing Director.

   The person responsible for the legal affairs of the ESM shall have authority to provide such legal opinions and to certify such documents as may be required in connection with the ESM's borrowing operations.

3. Every security issued or guaranteed by the ESM shall bear on its face a conspicuous legend to the effect that it is not an obligation of any ESM Member.

**Article 16**
*Representation*

Without prejudice to Articles 13(4), 14(3), 15(3), 16(3), 17(3) and 18(4) of the Treaty, the ESM shall be validly represented in dealings with third parties and in legal proceedings:

(a) by the Managing Director or, in his or her absence, by any two Directors acting jointly; and

(b) by any person acting within the limits of specific powers delegated by the Managing Director.

**Article 17**
*Disclosure of Documents*

1. This Article 17 sets forth the conditions under which the ESM may communicate documents drawn up or held by the ESM to other persons or entities or otherwise disclose such documents externally.

   This Article 17 does not concern:

   (a) the flow of information within the ESM, including to the Board of Governors, the Board of Directors, the Board of Auditors or the external auditors;

   (b) the flow of information within and between the national governments and parliaments of ESM Members, it being understood that this Article 17 is without prejudice to applicable legal provisions governing such information exchanges.

2. Documents held by the ESM but drawn up by or on behalf of the European Commission, the ECB or the International Monetary Fund may be communicated or otherwise disclosed only in accordance with the rules governing disclosure of the documents of the relevant institution.

   Documents held by the ESM but drawn up by or on behalf of an ESM Member:

   (a) may be communicated to the ESM Members, the European Commission, the ECB and the International Monetary Fund; *provided that,* if marked as confidential by the relevant ESM Member, such documents shall be communicated subject to appropriate confidentiality safeguards to be agreed with said ESM Member, such agreement not to be unreasonably withheld;

   (b) may be disclosed to other parties only with the prior written consent of the relevant ESM Member.

3. Paragraph 2 above shall not apply to the following documents held by the ESM ("Treaty Documents"):

   (a) the European Commission's and the ECB's conclusion referred to in the first subparagraph of Article 4(4) of the Treaty;

(b) any request for stability support and any related assessment pursuant to Article 13(1) of the Treaty;

(c) any memorandum of understanding pursuant to Article 13(3) of the Treaty;

(d) any report pursuant to Article 13(7) of the Treaty;

(e) any assessment referred to in Article 14(6) of the Treaty;

(f) any analysis referred to in Article 18(2) of the Treaty; and

(g) any application pursuant to Article 44 of the Treaty.

4. Documents drawn up by or on behalf of the ESM, including any agreement or other document signed by or on behalf of the ESM, as well as Treaty Documents and documents held by the ESM but drawn up by or on behalf of persons or entities other than those referred to in paragraph 2 above may be communicated or otherwise disclosed only as set forth in paragraphs 5 through 9 below.

5. Without prejudice to paragraphs 6, 7, 8 and 9 below, documents within the scope of paragraph 4 above:

(a) may be communicated to ESM Members, the European Commission, the ECB and the International Monetary Fund;

(b) may be disclosed to other parties if and to the extent that the Managing Director authorises such disclosure.

6. The minutes and summary records of proceedings of the Board of Governors, the Board of Directors, any of their respective committees, the Management Board and the Board of Auditors shall be confidential and shall not be communicated or otherwise disclosed, except:

(a) as required by the Treaty; or

(b) as needed in connection with the legal documentation of borrowing operations or other transactions of the ESM; or

(c) insofar as the relevant Board authorises the Managing Director to arrange for suitable publicity on any particular matter reflected therein.

7. When a document within the scope of paragraph 4 above relates to a particular ESM Member, the Managing Director shall notify such ESM Member at least three business days before communicating or disclosing such document pursuant to paragraph 5 above, except in urgent cases when said notification shall be made as soon as possible.

8. The ESM shall not disclose documents or parts of documents within the scope of paragraph 4 above that contain personal data concerning individuals, except when this would be permitted under Articles 8 and 9(1), (2) or (6) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the

protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

9. The Managing Director shall subject the communication or disclosure of documents within the scope of paragraph 4 above to special safeguards, including (but not limited to) confidentiality undertakings by the recipients, in order to ensure the confidentiality of:

   (a) non-public market-sensitive material that presents a clear risk of triggering a disruptive market reaction if disclosed;

   (b) non-public information on policy intentions of the ESM, any ESM Member or any other country or international institution where premature disclosure would undermine the ability to implement such policy intentions;

   (c) other non-public information the disclosure of which would (i) prejudice the legitimate interests of an ESM Member that requests or has received stability support under the Treaty, (ii) threaten the stability of the euro area or (iii) cause disruption of the financial markets;

   (d) other non-public information concerning financial institutions that are proposed to be, or have been, recapitalised under financial assistance granted pursuant to the Treaty;

   (e) any other non-public information marked as confidential by the author of the relevant document;

   (f) correspondence, draft reports or other documents prepared for internal deliberations; or

   (g) legal advice prepared or received by the legal service of the ESM.

10. If only parts of a document are covered by any of the exceptions to disclosure set forth in this Article 17, the remaining parts of such document shall be disclosed.

    Said exceptions shall apply only for the period during which the relevant exception is justified on the basis of the content of the document.

11. The ESM shall refer requests of information or documents by national parliaments of ESM Members to the government of the relevant ESM Member.

12. The Board of Directors, acting by qualified majority, shall adopt detailed guidelines reflecting the ESM's policy regarding the matters referred to in this Article 17.

13. The Board of Governors, acting by qualified majority, may derogate from the rules set forth in this Article 17 when necessary or appropriate for an overriding public interest or to effect the intent and purpose of the Treaty.

**Article 18**
*Staff*

1. The Board of Directors shall set forth the terms and conditions of employment of the staff engaged by, or seconded to, the ESM in staff rules to be adopted by qualified majority.

2. The staff rules shall also define appropriate procedures for the consideration of complaints and grievances of individual staff members on the terms of their employment or any other matters dealt with in this Article 18 or in the staff rules.

3. The Managing Director shall be the chief of the staff of the ESM. He or she shall engage, organise and dismiss the staff and generally manage the human resources of the ESM in accordance with the staff rules.

   The Managing Director may issue general administrative orders on such personnel matters as are identified by the staff rules.

4. In recruiting and managing the human resources of the ESM, the Managing Director shall pay due regard to:

   (a) the transfer and the optimal integration and utilisation of the human resources and know-how available at the European Financial Stability Facility with a view to ensuring efficiency and continuity; and

   (b) the paramount importance of the personal ability, technical competence and qualifications of the relevant persons.

5. The recruiting, employment, classification, training, promotion and career development generally of members of staff of the ESM shall be made without discriminating against any person because of sex, race, ethnic or social origin, creed, sexual orientation or nationality.

**Article 19**
*Code of Conduct*

The Board of Directors, acting by qualified majority, shall adopt a code of conduct which shall be binding on the Managing Director and all Directors, alternate Directors and members of staff of the ESM and shall set forth their obligations on such matters as confidentiality, public statements and contacts with the media, personal investments and disclosure of financial and business interests.

**Article 20**
*Financial Year*

The financial year of the ESM shall begin on 1 January and end on 31 December of each year, except the first financial year, which shall begin on the date of entry into force of the Treaty and end on 31 December of the same year.

**Article 21**
*Accounts and Audit*

1. The Board of Directors shall keep the accounts of the ESM and draw up its annual accounts, as well as the quarterly summary statement and profit and loss statement referred to in Article 27(2) of the Treaty, both expressed in euro, in accordance with generally accepted accounting principles and such additional accounting conventions as are defined by the Board of Directors, acting by qualified majority, and approved by the Board of Auditors.

2. The ESM shall in its internal accounting keep separate accounts for its activities carried out under the instrument for the direct recapitalisation of institutions, in accordance with generally accepted accounting principles and such additional accounting conventions adopted in the manner set forth in paragraph 1 above.

3. The accounts of the ESM shall be audited in accordance with generally accepted auditing standards at least once every year by independent external auditors.

**Article 22**
*External Auditors*

1. The ESM's independent external auditors shall be appointed by the Board of Governors, for a term of three years, from among audit firms of good international repute, approved and subject to public oversight in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

2. There shall be a mandatory rotation of the external auditors every six years.

   The external audit firm shall not be eligible to provide non-audit related consulting services to the ESM. Its provision of audit-related consulting services shall be subject to the prior approval of the Board of Directors, and the remuneration for such services may not exceed one-third of the remuneration for the audit services.

**Article 23**
*Financial Statements and Annual Report*

1. The Board of Directors shall draw up the financial statements in respect of any given financial year no later than 31 March of the following year, in the form of a balance sheet, a statement of profit and loss and explanatory notes. The explanatory notes shall contain a summary of the relevant balance sheet and statement of profit and loss items in respect of the activities carried out under the instrument for the direct recapitalisation of institutions, extracted from the accounts referred to in Article 21(2).

2. The Managing Director shall draw up an annual report in respect of each financial year and submit it to the Board of Governors for approval at its annual meeting.

   The annual report shall contain:

   (a) a description of the policies and activities of the ESM;

   (b) the financial statements for the relevant financial year;

   (c) the report of the external auditors in respect of their audit in respect of said financial statements; and

   (d) the report of the Board of Auditors in respect of said financial statements pursuant to Article 24(6).

3. Once approved by the Board of Governors, the annual report shall be published on the website of the ESM.

**Article 24**
*Board of Auditors*

1. The members of the Board of Auditors shall be appointed by the Board of Governors, acting by qualified majority, as follows:

   (a) two members upon the proposal of the Chairperson;

   (b) two members nominated by the supreme audit institutions of two ESM Members, one from the group of half of the ESM Members (rounded down to the nearest integer number) holding the highest number of shares of the ESM and the other from the group of remaining ESM Members, according to a rotation system following the English alphabetical order of the names of the ESM Members in each group, as stated in Annex II to the Treaty; and

   (c) one member nominated by the European Court of Auditors.

   The members shall be appointed for a non-renewable term of three years, except that, among the first members, one of the members referred to in subparagraph (a) above and one of those referred to in subparagraph (b) above, whose names are drawn by lot, shall be appointed for a non-renewable term of four years.

   To be eligible for appointment to the Board of Auditors, persons must possess the professional knowledge, skills and auditing experience that are necessary for the proper performance of the Board’s tasks.

2. The Board of Auditors shall elect a chairperson and a vice-chairperson from among its members, each for a renewable term of one year.

3. At least three members must be present in order for the Board of Auditors to validly deliberate. Decisions of the Board are adopted by simple majority of the votes cast.

Members may participate in meetings of the Board by means of teleconferencing or any other electronic means allowing real-time bidirectional or multidirectional communication enabling participants to hear all other participants and address the meeting from a remote location. Participation by such means shall constitute presence in person at said meeting for purposes of the quorum requirement.

The Board of Auditors shall establish rules of procedure to govern its proceedings.

4. The Board of Auditors shall carry out the audits with which it is charged by Article 30(3) of the Treaty independently. It shall audit regularity, compliance, performance and risk management of the ESM in accordance with international auditing standards. It shall monitor and review the ESM's internal and external audit processes and their results.

   The Board of Auditors shall have full access to any document and information of the ESM, including data of internal and external audit processes, that are needed for the implementation of its tasks.

5. The Board of Auditors may have recourse to subject matter experts for supporting audit work.

   The ESM shall provide the office facilities and resources which the Board of Auditors needs for the performance of its tasks.

   The members of the Board of Auditors are entitled, at the ESM's expense, to the reimbursement of, or the payment of allowances for, travel and office expenses incurred by them in the performance of their duties, in the amounts determined, and adjusted from time to time, by the Board of Directors, acting by qualified majority.

6. The Board of Auditors shall draw up an annual report for the Board of Governors to report on its audit work, its audit findings in relation to the operational accounts and balance sheet and its conclusions and recommendations.

   The Board of Governors shall make said annual report accessible to the national parliaments and supreme audit institutions of the ESM Members and to the European Court of Auditors no later than 30 days after having received it from the Board of Auditors. It shall simultaneously send the report to the European Parliament for information.

7. The Board of Auditors may decide to draw up additional reports at the request of the Board of Governors or the Managing Director. Any such reports shall be confidential and shall not be published or disclosed to third parties except insofar as the Board of Governors or the Managing Director permits otherwise.

8. Before definitively adopting any audit report, the Board of Auditors shall give auditees and third parties a reasonable opportunity to comment on those points in such reports that refer to them by name or in a manner easily identifiable by the reader.

9. The members of the Board of Auditors shall, in accordance with international standards, take care to avoid all conflicts of interests and shall refrain from any action incompatible with their duties, at the time of their appointment and both during and

after their term of office. In the performance of their duties, they shall neither seek nor take instructions from any government or any other body. Their independence must be beyond doubt.

10. The members of the Board of Auditors and the experts appointed by it shall keep all non-public information obtained in the performance of their duties in the strictest confidence, both during and after their term of office or appointment.

**Article 25**
*Annual Budget*

1. The Managing Director shall draw up an administrative budget for each financial year and submit it to the Board of Directors no later than 15 November of the preceding financial year.

   The Board of Directors shall approve the administrative budget no later than 15 December of the preceding financial year.

   The Managing Director shall submit the budget for the first financial year of the ESM to the Board of Directors no later than three months after its inaugural meeting.

2. The annual budget, as approved by the Board of Directors, shall be presented to the Board of Governors at its next annual meeting.

**Article 26**
*Service of Process*

Process shall be validly served on the ESM if delivered to it at its seat in Luxembourg. The ESM may in any contract specify any other address for service of process, including in a State that is not an ESM Member.

**Article 27**
*Language*

1. The working language of the ESM, including for the conduct of meetings of the Board of Governors, the Board of Directors, the Management Board and the Board of Auditors, shall be English.

2. The authentic version of all records of the ESM shall be the English version, unless:

   (a) the Board of Directors decides otherwise in respect of a particular transaction, or

   (b) at the request and at the expense of an ESM Member, the person responsible for the legal affairs of the ESM validates as authentic a translation of a particular resolution taken by the Board of Governors or, pursuant to the powers delegated to it in accordance with Article 5 of these By-Laws, by the

Board of Directors into the official language or languages of said ESM Member if needed for the completion of applicable national procedures.

## Article 28
*Amendment*

These By-Laws may be amended from time to time by the Board of Governors acting by qualified majority.